



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

**Caption in Compliance with D.N.J. LBR
9004-2(c)**

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In re:

SHAPES/ARCH HOLDINGS L.L.C., *et al.*,

Debtors.

Chapter 11

Case No. 08-14631
(Jointly Administered)

Judge: Hon. Gloria M. Burns

**CONSENT ORDER MODIFYING THE
AUTOMATIC STAY AND THE PLAN INJUNCTION IN
FAVOR OF HAL AND DEBRA YATES, ET AL. FOR THE LIMITED
PURPOSE OF PERMITTING HAL AND DEBRA YATES, ET AL.
TO PURSUE AN ACTION TO THE EXTENT OF INSURANCE**

The relief set forth in the following pages, numbered two (2) through six (6) is

hereby

ORDERED.

DATED: 4/19/2010

45765/0003-6459166v1



Honorable Gloria M. Burns
United States Bankruptcy Court Judge

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Debtor: SHAPES/ARCH HOLDINGS L.L.C., *et al.*
Case No: 08-14631 (GMB)
Adv. Pro. No. 10-01031 (GMB)
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WHEREAS, Cody Yates, an infant by his guardians *ad litem* Hal and Debra Yates, and Hal and Debra Yates, individually, and Katie Yates (collectively, the “**Claimant**”), filed an action in the Superior Court of New Jersey, Ocean County captioned *CODY YATES, an infant by his guardians ad litem HAL and DEBRA YATES; and HAL and DEBRA YATES, Individually; KATIE YATES v. ULTRA HARDWARE PRODUCTS, LLC; ALUMINUM SHAPES, LLC; THE ARCH AMERICA COMPANY; THE HOME DEPOT, INC; RICKEL HOME CENTERS, INC; EOS PARTNERS L.P.; AND A-Z OWNER CORPORATIONS (1-5) (Fictitious Corporations); XYZ MANUFACTURING INC. (1-5); JOHN DOE MANAGEMENT COMPANY (1-5); and JANE AND JOHN DOES (1-5) (Fictitious Individuals), Case No. OCNL-435-08* alleging counts of Strict Products Liability; Failure to Test, Warn, or Instruct; Breach of Implied Warranty of Merchantability and of Fitness for Particular Purpose; Negligent Design and Manufacture; Violations of the Consumer Fraud Act; Common Law Fraud; and Negligent Infliction of Emotional Distress on Bystander(s); and seeking a judgment in an amount in excess of \$1,000,000 (the “**Action**”); and

WHEREAS, Shapes/Arch Holdings L.L.C., Shapes LLC, Ultra LLC, Delair LLC, and Accu-Weld LLC (together, the “**Debtors**”) filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the United States Code, as amended (the

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“Bankruptcy Code”) on March 16, 2008 (the **“Petition Date”**) in the United States

Bankruptcy Court for the District of New Jersey; and

WHEREAS, upon such filings, actions against the Debtors and their assets on account of pre-petition claims were barred by the automatic stay provisions of Section 362 of the Bankruptcy Code; and

WHEREAS, the Claimant, by and through counsel, filed a proof of claim in the bankruptcy cases on April 4, 2008, alleging an unsecured claim against the Debtors in the amount of \$1,000,000; and

WHEREAS, the Debtors’ Third Amended Joint Plan of Reorganization (the **“Plan”**) was confirmed by Order of this Court dated July 24, 2008 (the **“Confirmation Order”**) and became effective on August 8, 2008 (the **“Effective Date”**); and

WHEREAS, on the Effective Date of the Plan, the Class 10 Liquidation Trust (“the **Trust**”) came into existence, and pursuant to Sections 4.5, 5.2 and 5.3 of the Plan and Article IV of the Plan Administration Agreement (an exhibit to the Plan), the Trust, by its Trustee, Steven D. Sass, was empowered to, among other things, object to and resolve unsecured claims; and

WHEREAS, the Debtors, the Claimant and the Trust (together, the **“Parties”**) wish to consensually resolve any claims the Claimant may hold against the Debtors

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and/or the Trust and the property of each, including, but not limited to, claims asserted in the Action;

NOW, THEREFORE, it is hereby stipulated and agreed between the Debtors, the Claimant and the Trust as follows:

A. The automatic stay pursuant to 11 U.S.C. § 362(a) and the injunction provisions of the Plan and Confirmation Order are hereby modified in these cases to permit the Claimant to proceed with the Action, solely on the terms and conditions set forth below.

B. The Claimant agrees that its recovery against the Reorganized Debtors, the Debtors' estates and property shall be limited to the actual available proceeds, if any, of insurance, and shall be recoverable by the Claimant solely from the insurer and not from the Reorganized Debtors, the Debtors' estates or any of the Debtors' other assets. Except as otherwise set forth in this paragraph, the Claimant hereby releases the Debtors and their estates from any and all obligations, claims and demands of any kind, at law or in equity, arising out of, by reason of or relating to the Action or any other obligations, claims and demands of any kind that the Claimant may hold or assert against the Debtors or their estates as of the date of this Stipulation.

C. The Claimant acknowledges and agrees that it has no claims against the Trust, the Trustee or the assets of the Trust, and that it is not a beneficiary of the Trust

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and will not seek any distribution or recovery from the Trust. The Claimant hereby releases the Trust and the Trustee from any and all obligations, claims and demands of any kind, at law or in equity, arising out of, by reason of or relating to the Action or any other obligations, claims and demands of any kind that the Claimant may hold or assert against the Trust or the Trustee as of the date of this Stipulation.

D. This Stipulation contains the entire agreement by and among the Parties and all prior understandings or agreements between them, if any, are merged into this Stipulation.

E. This Stipulation and the obligations of the Parties are specifically subject to, and conditioned upon, the approval of the Stipulation by the Bankruptcy Court. If the Bankruptcy Court declines to approve the Stipulation, the provisions hereof shall be null, void and of no force and effect, and nothing contained herein shall be deemed an admission by any of the Parties.

F. This Stipulation may be signed in counterparts, and faxed copies of signatures shall be deemed originals for purposes of this Stipulation.

G. This Stipulation shall be binding upon all successors and assigns of each of the Parties, and any subsequently appointed Chapter 11 trustee or Chapter 7 trustee.

H. This Court shall retain jurisdiction to resolve disputes or controversies arising from or related to the terms of this Stipulation

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Dated: April 12, 2010
Cherry Hill, New Jersey

COZEN O'CONNOR, PC
Counsel to the Debtors and Reorganized
Debtors

By: /s/ Jerrold N. Poslusny
Jerrold N. Poslusny, Jr.
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Dated: December 16, 2009
Toms River, New Jersey

FUGGI & FUGGI
Attorneys for Hal & Debra Yates, *et al.*

By: /s/ Robert R. Fuggi, Jr.
Robert R. Fuggi, Jr.
47 Main Street
P.O. Box 1808
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Dated: April 14, 2010
Hackensack, New Jersey

**COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.**
Counsel to the Class 10 Trust

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